Filed 2/11/09 G.S. v. Super. Ct. CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

G.S., Petitioner, v. SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Real Party in Interest.	B211985 (Los Angeles County Super. Ct. No. CK67093)

ORIGINAL PROCEEDINGS in mandate. Jacqueline H. Lewis, Referee. Petition denied.

Law Office of Grace White and Grace White for Petitioner.

No appearance for Respondent.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and O. Raquel Ramirez, Deputy County Counsel, for Real Party in Interest.

Children's Law Center of Los Angeles and Sophia Ali for Minor.

Petitioner G.S. (mother) seeks extraordinary relief (Cal. Rules of Court, rule 8.452) from an order setting a hearing under Welfare and Institutions Code section 366.26.[1] Mother contends the juvenile court's ruling terminating her reunification services is unsupported by the record.

We conclude the juvenile court acted within its discretion in refusing to extend reunification services beyond the 18-month deadline. Therefore, the petition is denied.

FACTUAL AND PROCEDURAL BACKGROUND

The three-month-old minor was detained on February 17, 2007 after mother was arrested for felony burglary. The Department filed a section 300 petition, alleging under subdivision (b) [failure to protect] that mother had established an endangering situation for the minor by participating in the crime of burglary while the child was in mother's care and custody. A first amended petition added an allegation of substance abuse.

The contested 18-month review hearing took place over three days, October 8, 14 and 31, 2008. Mother admitted she had missed several drug tests and she acknowledged that a no-show is considered a "dirty test" by the Department, but attributed the no-shows to a lost identification card which precluded her from appearing for drug tests.[2]

The evidence further showed that in July 2008, there was a police raid on the apartment which mother shares with others. The police removed certain items but no charges were filed against mother. Susan Turnbull, a drug and alcohol specialist who was working with mother, testified that mother told her that incident "had more to do with her sister than it did with her."

After taking the matter under submission, on October 31, 2008, the juvenile court terminated mother's reunification services and set the matter for a section 366.26 hearing on February 27, 2009.

---

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

[2] However, mother had an alternative form of identification, namely, a passport, which enabled her to resume drug testing.

The juvenile court stated: "So we are 20 months into this case. . . . The issues that caused the initial detention of [the minor] are exactly the issues that we have 20 months later." The court told mother "I believe that you lied to me consistently when you were on the witness stand, and I was really surprised by that." Further, "what is concerning to me is that the excuses are the same. It's someone else's problem; it's someone else's fault." In addition, there are "issues here regarding infrequent testing. The court . . . and the social worker have given [mother] every break. [The minor] was under the age of three and we're 20 months out. And you know, knowing how important the testing was here, the consistent testing, for mother to just say, well, I didn't have an I.D. and it took me months to follow up on it . . . instead of doing what needed to be done to prove to everyone that mother was clean, and that she could take care of [the minor] is concerning frankly." The court found "the social worker has provided more than reasonable efforts. She really, really tried to work with this mother and this family. . . . And 20 months later we're still no further than we ever were.

"[A]s I indicated, at some point, it's supposed to be after six months, and in this case it's 20 months, we need to look at what is in [the minor's] best interest in regards to stability and permanence and the court is going to do that today."

Mother then filed the instant petition for extraordinary writ, challenging the termination of reunification services. This court issued an order to show cause.

CONTENTIONS[3]

Mother contends: the juvenile court's findings and ruling terminating reunification services are not supported by the record; the court could have continued the case for another six months; and the court erred in admitting evidence of the police raid on mother's home without testimony of the police officer.[4]

---

[3] Minor's counsel has filed a joinder in mother's brief.

[4] Mother's assertion of evidentiary error in the admission of evidence of the July 2008 police raid is patently meritless. The reporter's transcript of the October 14, 2008 hearing, at pages 31 and 32, indicates that testimony came in without any objection by mother's trial counsel. (Evid. Code, § 353, subd. (a).)

DISCUSSION

1. *No abuse of discretion by juvenile court in refusing to extend reunification services.*

a. *Standard of review.*

A juvenile court's dispositional orders, including those respecting reunification services, are subject to that court's broad discretion. To reverse such an order, a reviewing court must find a clear abuse of discretion. (*In re N.M.* (2003) 108 Cal.App.4th 845, 852.)

b. *Mother's argument.*

Mother seeks an additional four to six months of reunification services and contends she met her burden in that regard because: she regularly and consistently visited the child; has made consistent progress in that she completed her NA program, has enrolled in AA and is continuing in those programs; she "tested dirty" only once, she is being tested by her counselor as well, at random, never tested dirty with her counselor, and she now has her I.D. and is testing through a voluntary program where she is enrolled and pays for testing.

c. *No abuse of discretion in juvenile court's refusal to extend reunification services.*

At the time this matter was heard below, section 361.5 provided in relevant part at subdivision (a)(3): "Notwithstanding paragraphs (1), (2), and (3), *court-ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent or guardian* if it can be shown, at the hearing held pursuant to subdivision (f) of Section 366.21, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period. The court shall extend the time period only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period or that reasonable services have not been provided to the parent or guardian. If the court extends the time period, the court shall specify the factual basis for its conclusion that there is a

substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period." (Italics added; Stats. 2007, ch. 583, § 25.5.)[5]

Under exceptional circumstances, "*in rare instances*" a juvenile court could extend reunification services beyond 18 months. (*In re N.M., supra*, 108 Cal.App.4th at p. 852, italics added; see, e.g. *In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1793 [mother hospitalized with mental illness during reunification period]; *In re Daniel G.* (1994) 25 Cal.App.4th 1205, 1216 [no reunification services offered during last 12 months]; *In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777 [inadequate services].)[6]

Here, the Department detained the minor, who then three months old, on February 17, 2007. As the juvenile court noted at the October 31, 2008 hearing, at which time it terminated reunification services, "we are 20 months into this case." The juvenile court further observed, "the issues that caused the initial detention of [the minor] are exactly the issues that we have 20 months later."

Mother contends the juvenile court erred in refusing to extend reunification services for another four or six months because she "tested dirty only once." The record is contrary.

The record reflects that a no-show test counts as a dirty test. Mother had no-shows on April 28, May 27, July 15, July 25, and August 12, 2008. Thus, in the six-month period before the contested 18-month review hearing, mother had *five* no-shows.

---

[5] We note effective January 1, 2009, section 361.5, subdivision (a)(3) provides reunification services may be extended up to a maximum period not to exceed 24 months.

[6] Mother does not contend the Department failed to provide her with reasonable reunification services.

On this record, we find no exceptional circumstances which compelled the continuation of reunification services beyond 18 months. Reasonable family reunification services were provided and no "external factor" prevented mother from participating in the case plan. (*Andrea L. v. Superior Court* (1998) 64 CalApp.4th 1377, 1388.) The juvenile court acted within its discretion in refusing to extend reunification services.

It is unnecessary to address any remaining arguments.

DISPOSITION

Mother's petition for extraordinary writ is denied. The Department's motions to dismiss and to strike the petition are denied as moot.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KLEIN, P. J.

We concur:

KITCHING, J.

ALDRICH, J.